IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A. No.1778 of 2002

B.Mohan .. Appellant (Petitioner)

-vs-

1. The Telecom District Engineer
   Virudhunagar.

2. The Accounts Officer,
   Telephones, Virudhunagar.

3. The Arbitrator & Divisional
   Engineer (INTL)
   Telephone Exchange,
   Shevapet, Salem. .. Respondents(Respondents)

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.20490 of 1998 dated 11.04.2002. The Writ petitin filed under Article 226 of the Constitution of India prayed for the issuance of Writ of Certiorari to call for the records relating to the proceedings of the 3rd respondent in Memo.No.DE(A).SLM/ARB/VR/43589/97-98-11 dated 23.11.1998 and quash the proceedings as illegal, incompetent and unconstitutional (WP.No.20490 of 1998)

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For Appellant : Mr.V.Ragavachari

For Respondents: Mr.P.Wilson,
Asst.Solicitor General

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 11.04.2002 made in W.P.No.20490 of 1998, in and by which the learned Judge after finding that there is no merit in the amount claimed by the petitioner, dismissed his writ petition.

2. The dispute relates to telephone charges for telephone No.43589. According to the appellant, after June 1994, his telephone was showing excess billing and to avoid disconnection, according to him the amount was paid under protest. However on 01.08.1994, he received another bill for Rs.40,663/- and in October 1994, he had been billed at Rs.17,007/-. Immediately, he lodged a complaint to the Department and he requested the department to rectify the bills and the charges. The Divisional Engineer (INTL)- third respondent, was appointed as Arbitrator. By award dated 23.11.1998, after conducting enquiry and considering the relevant materials, the Arbitrator arrived a conclusion that a sum of Rs.51,919/- towards the bill dated 01.08.1994 and 01.10.1994 claimed by the telegraphic authority are in order and the complainant/appellant was directed to pay the same amount within fifteen days from the date of receipt of the communication. The said award was challenged by the appellant/petitioner by filing a writ petition.

3. The learned Judge by the impugned order dated 11.04.2002, after going into all the factual details as well as the reasoning of the Arbitrator, accepted the stand taken by the Department and dismissed the writ petition as devoid of merits, hence the present writ appeal.

4. Mr.V.Ragavachari, learned counsel for the appellant questioned the order of the learned single Judge as well as the award passed by the Arbitrator. According to him, though the Arbitrator arrived at a factual conclusion based on certain materials, those materials were not furnished to the appellant.

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5. In the light of the above submissions, we perused the award dated 23.11.1998. It is not in dispute that based on the complaint of the appellant, an Arbitrator was appointed and in turn, he was asked to place all the details. In the same manner, the Telecom Department also filed their objections/counter and placed relevant materials. The appellant/petitioner was also enquired by the Arbitrator. A perusal of the arbitration proceedings show that the metering equipment of the appellant was thoroughly checked and reported that no faults in the subscriber meter and associated metering equipment. It further shows that the telephone in question was kept under observation. It was observed from MLOE print out that heavy calls recorded are due to usage of unauthorised Fax machine connected to the line VR 43589 and frequent usage of telephone on ISD/STD calls by the subscriber. The award also shows that though the subscriber – appellant claimed that at the relevant time his telephone was dead, no complaints were received by the Department about the non working of telephone and no mention of the same in excess metering complaint. On the other hand, the field investigation report revealed that the telephone in question was working properly. It also shows that as a precautionary measure, the telephone was kept under observation from 16.06.1994 to 27.06.1994 on noticing the spurt in the bill dated 01.06.1994. It further shows that the appellant has paid the bill and there was no complaint. The MLOE observation revealed that the complainant has made several ISD calls (18 foreign calls) and also NSD calls. The observation also shows that no defects were noticed in the subscriber meter as well as in the metering equipments.

6. The perusal of the award of the Arbitrator makes it clear that the appellant/petitioner was given an opportunity to put forth his grievance, in fact, he was enquired and after thorough examination/enquiry/observation, the Arbitrator has arrived a conclusion that first of all, there was no defect in the telephone and there were materials to show that the appellant has made several ISD calls as well as NSD calls. In addition to the same, the enquiry revealed that the telephone line had a Fax machine which was found attached unauthorisedly.

7. All the above mentioned factual details were considered by the learned Judge and rightly concluded that the Arbitrator had rendered a definite finding that the appellant has been in the habit of making ISD/NSD calls, besides he also connected a FAX machine.

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8. We are satisfied that the said factual conclusion is based on the relevant materials as seen from the award of the Arbitrator. We are unable to accept the argument of the learned counsel for the appellant. On the other hand, we are in entire agreement with the conclusion arrived by the learned Judge, who in turn, considered the award of the Arbitrator. Accordingly, the appeal fails and the same is dismissed. No costs.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Telecom District Engineer, Virudhunagar.
2. The Accounts Officer, Telephones, Virudhunagar.
3. The Arbitrator & Divisional Engineer (INTL)
   Telephone Exchange, Shevapet, Salem.

+ 1 cc to M/s. V. Raghavachari, Advocate, SR No.4104

+ 1 cc to Mr. P. Wilson, ACGI, SR No.4175

RS(CO)
SR/7.2.2007

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